IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7700 OF 2007

Dinanath Nagari Sah.Patsanstha
Maryadit Sangli .. Petitioner
Versus
State of Maharashtra .. Respondent

Mr.Abhinandan Vagyani i/b. Manoj Patil for petitioner
Mr.R.M.Patne, A.G.P. for Respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 4th December 2007

P.C.

. Rule. Respondents waive service. By consent, rule made returnable forthwith. Heard parties.

2. The orders dated 3rd July 2007 and 4th October 2007 are the subject matter of challenge in this petition.

3. The submission of Mr.Vagyani appearing for petitioner is that the society was called upon by the concerned authority on 16th June 2007 to show cause as to why the alleged irregularities in the Audit report furnished to it should not be rectified and if the same are not rectified, why further action should not be taken.

4. The petitioners submit that they have given a detailed reply to this show cause notice on 4th July 2007. There was a further reply given on 3rd August 2007. However, on 3rd July 2007, the order passed by the authorities proceeds on the basis that the Audit report discloses serious irregularities and defects in the financial management of the society. The order proceeds to state that no explanation is received from the society. Thereafter, the order proceeds to appoint an Enquiry Officer by resorting to Section 88 of the Maharashtra

Coop.Societies Act, 1960 (for short the Act). Further order is passed on 4th October 2007 and it purports to correct the earlier order. It replaces the Enquiry Officer.

5. The submission is that once the irregularities are noticed or the defects come to the knowledge of the authority, then, opportunity to rectify the same is contemplated by law and until and unless such opportunity is given but the defects are not rectified, further action is not called for.

6. Reliance is placed upon a decision of a learned Single Judge in the case of Krishna Sahebraoji Patil Dongaonkar Vs. State of Maharashtra & Ors., reported in 2004(6) Bom.C.R. 692 (Aurangabad Bench).

7. With the assistance of Mr.Vagyani and Mr.Patne, I have perused the impugned order.

Mr.Patne states that the impugned order has been passed on account of the fact that serious irregularities were noticed so also defects, as pointed out in the Audit Report.

8. In my view, the authorities have rushed into the matter without even waiting for the explanation so also without holding that the explanation is unsatisfactory, in the peculiar facts of this case, they could not have proceeded to appoint Enquiry Officer under section 88. The decision to appoint Enquiry Officer straight away in the facts peculiar to this case is contrary to the scheme of the Act and therefore, the orders are vitiated. They are ex facie bad in law. In these circumstances, following order would meet the ends of justice:-

(a) The orders dated 3rd July 2007 and 4th October 2007 are quashed and set aside;

(b) Proceedings shall now commence from the stage of show cause notice dated 16th June 2007 and the replies thereto furnished on 4th July 2007 and 3rd August 2007. Authorities to take the same into consideration and, thereafter, pass further orders in accordance with law;

(c) Needless to state that the authorities shall give an opportunity to the petitioner society of putting forward its case and explaining to the authorities that the acts attributed do not amount to any irregularity or that the financial working of the society has not resulted in any defects. All such explanations and submissions be duly considered and, thereafter, further action, if necessary, in law, be taken.

9. Petition is allowed. All contentions on merits are expressly kept open. No costs.

(S.C.Dharmadhikari, J)